
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 111

HOUSING; RATES

**The Housing Benefit (General) (Amendment
No. 2) Regulations (Northern Ireland) 1996**

Made - - - - *21st March 1996*

Coming into operation *2nd April 1996*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(d), 129(2) to (4), 131(1) and 171(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(1) and sections 5(1)(h) and (p) and 61(1) to (3) of the Social Security Administration (Northern Ireland) Act 1992(2) and of all other powers enabling it in that behalf, with the consent of the Department of the Environment for Northern Ireland(3) in so far as its consent is required, and after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(4), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (General) (Amendment No. 2) Regulations (Northern Ireland) 1996 and shall come into operation on 2nd April 1996.

(2) In these Regulations “the principal Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(5).

(3) The Interpretation Act (Northern Ireland) 1954(6) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(1) 1992 c. 7

(2) 1992 c. 8

(3) See section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I.1993/1579 (N.I. 8))

(4) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

(5) S.R. 1987 No. 461; relevant amending Regulations are S.R. 1988 No. 314, S.R. 1989 Nos. 125 and 260, S.R. 1990 Nos. 297, 345 and 442, S.R. 1992 Nos. 141, 444 and 549, S.R. 1993 Nos. 145, 149 and 381, S.R. 1994 No. 65 and S.R. 1995 Nos. 89 and 101

(6) 1954 c. 33 (N.I.)

Amendment of regulation 2 of the principal Regulations

2. In regulation 2(1) of the principal Regulations (interpretation), after the definition of “maternity leave”(7) there shall be inserted the following definition—

““maximum rent” means the amount to which the eligible rent is restricted in a case where regulation 11 (maximum rent) applies;”.

Amendment of regulation 8 of the principal Regulations

3. In regulation 8(1)(b) of the principal Regulations (eligible housing costs)(8) for “regulation 10(3) (rent)” there shall be substituted “regulations 10(3), (6A) and (6B) (rent) and 11 (maximum rent)”.

Amendment of regulation 9 of the principal Regulations

4. In regulation 9(3) of the principal Regulations (rates) the words “and to regulation 11 (restrictions on unreasonable payments)” shall be omitted.

Amendment of regulation 10 of the principal Regulations

5. In regulation 10 of the principal Regulations (rent)(9)—

- (a) in paragraph (3) for “and to regulations 11 and 12 (restrictions on unreasonable payments and rent increases)” there shall be substituted “and to paragraphs (6A) and (6B) and regulations 11 (maximum rent) and 12 (restrictions on rent increases)”;
- (b) in paragraph (3)(b) after “Schedule 1” there shall be inserted “except in a case where an amount in respect of that ineligible charge has been deducted from a relevant rent as defined in regulation 11(16) and a maximum rent has been determined by reference to that relevant rent”;
- (c) after paragraph (6) there shall be added the following paragraphs—
 - “(6A) In no case shall the amount of a person’s eligible rent as determined in accordance with paragraphs (1) to (5) exceed the amount of the maximum rent.
 - (6B) In any case where it appears to the Executive that in the particular circumstances of that case the eligible rent as determined in accordance with paragraphs (1) to (5) and (6A) is greater than it is reasonable to meet by way of housing benefit, the eligible rent shall be such lesser sum as seems to the Executive to be an appropriate rent in that particular case.”.

Insertion of regulation 10A into the principal Regulations

6. After regulation 10 of the principal Regulations (rent) there shall be inserted the following regulation—

“Determinations

10A.—(1) Subject to paragraph (2), where in respect of a claim for rent allowance the Executive is determining a rent in respect of the tenancy of a dwelling it shall—

- (a) make the determinations in accordance with Part I of Schedule 1A (determinations)(10), and

(7) Definition inserted by regulation 2(c) of S.R. 1993 No. 381

(8) Paragraph (1) was amended by regulation 2(a) of S.R. 1992 No. 444

(9) Paragraph (3) was amended by regulation 4 of S.R. 1993 No. 145

(10) Schedule 1A is inserted by regulation 14 of these Regulations

- (b) comply with Part II of Schedule 1A when making the determinations (assumptions etc.).
- (2) The Executive, on the first working day of each month, shall—
 - (a) make determinations in accordance with Part III of Schedule 1A (indicative rent levels), and
 - (b) comply with paragraph 7(2) of Part II of Schedule 1A (assumptions etc.) when making the determinations.
- (3) No determination shall be made—
 - (a) under paragraph 3 or 4 of Schedule 1A if the tenancy is of residential accommodation, within the meaning of regulation 7(3)(11), or in a hostel, or
 - (b) for a tenancy under Schedule 1B (excluded tenancies)(12).
- (4) This regulation shall apply as specified in Part V of Schedule 1A (special cases) in relation to—
 - (a) mooring charges payable for a houseboat;
 - (b) payments in respect of the site on which a caravan or a mobile home stands, or
 - (c) payments under a rental purchase agreement.”.

Substitution of regulation 11 of the principal Regulations

7. For regulation 11 of the principal Regulations (restrictions on unreasonable payments) there shall be substituted the following regulation—

“Maximum rent

11.—(1) Where the Executive has made a determination in accordance with Schedule 1A (determination of rent payable) the maximum rent shall be determined in accordance with paragraphs (2) to (15).

(2) In a case where a relevant rent has been determined, but a local reference rent is not required, the maximum rent shall be that relevant rent.

(3) In a case where a local reference rent has been determined, the maximum rent shall not exceed twice that local reference rent.

(4) Subject to the limit specified in paragraph (3), in a case where both a local reference rent and a relevant rent has been determined, and—

(a) the relevant rent is higher than the local reference rent, the maximum rent shall be the local reference rent plus 50 per cent. of the amount by which the relevant rent exceeds the local reference rent;

(b) the local reference rent is higher than the relevant rent, the maximum rent shall be the relevant rent.

(5) Subject to the limit specified in paragraph (3), in a case where a local reference rent has been determined, but a relevant rent has not been determined and the reckonable rent is more than the local reference rent, the maximum rent shall be the local reference rent plus 50 per cent. of the amount by which that reckonable rent exceeds the local reference rent.

(6) In a case where—

(a) the Executive has determined a maximum rent in respect of a dwelling, and

(11) Regulation 7(3) was added by regulation 3(3) of S.R. 1990 No. 442 and substituted by regulation 3(b) of S.R. 1993 No. 149

(12) Schedule 1B is inserted by regulation 14 of these Regulations

- (b) during the benefit period the reckonable rent in respect of that dwelling is reduced to a sum which is less than the reckonable rent at the time that maximum rent was determined,

then on review—

- (i) the maximum rent shall not be reduced during that benefit period where that sum is not less than the maximum rent, and
 - (ii) the maximum rent shall be reduced for the remainder of that benefit period to an amount equal to that sum where that sum is less than the maximum rent.
- (7) Subject to paragraph (8), in a case where—
- (a) the Executive has made a determination under regulation 12A(1), and
 - (b) subsequent to that determination the reckonable rent for that dwelling is changed, then in determining a maximum rent in relation to a claim for benefit of a claimant who has a liability to make payments in respect of that dwelling, the Executive shall treat the relevant rent or, as the case may be, reckonable rent to be that determined in or, as the case may be, applicable to, that determination referred to in sub-paragraph (a).

(8) Paragraph (7) shall not apply in a case where the reckonable rent is reduced to a figure below the figure that would have been the maximum rent if that reckonable rent had not changed; and where this paragraph applies, the maximum rent shall be the reckonable rent, as so reduced.

(9) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any person to whom paragraph 14(b) to (d) applied or, had a claim been made, would have applied, the maximum rent shall be either—

- (a) the maximum rent which applied before the death occurred, or
- (b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,

for a period of 12 months from the date of such a death.

(10) For the purposes of paragraph (9), a claimant shall be treated as occupying the dwelling if regulation 5(8) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)(13) is satisfied and for that purpose sub-paragraph (b) of that regulation shall be treated as if it were omitted.

(11) In any case where, pursuant to regulation 10(3) (non-eligible payments), the amount of a person's otherwise eligible rent falls to be lessened by any—

- (a) deduction for fuel, or
- (b) deduction for meals,

the maximum rent shall be that determined in accordance with paragraphs (1) to (11) less the amount of any such deductions.

(12) Subject to paragraph (13), where the Executive is satisfied that a person to whom paragraph (14) applies was able to meet the financial commitments for his dwelling when they were entered into, there shall be no maximum rent during the first 13 benefit weeks of the claimant's benefit period.

(13) Paragraph (12) shall not apply where a claimant was previously entitled to benefit in respect of a benefit period which fell wholly or partly less than 52 weeks before the commencement of his current benefit period.

(13) Paragraph (8) was amended by regulation 2(2)(b) of S.R. 1995 No. 101

(14) This paragraph applies to the following persons—

- (a) the claimant;
- (b) any member of his family;
- (c) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household;
- (d) subject to paragraph (15), any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him.

(15) Paragraph (14)(d) shall only apply to a relative who has no separate right of occupation of the dwelling which would enable him to continue to occupy it even if the claimant ceased his occupation of it.

(16) In this regulation—

“deduction for fuel” means any amount of a person’s otherwise eligible rent which is an ineligible service charge by reason of and within the meaning of paragraph 4 of Schedule 1 (ineligible service charges);

“deduction for meals” means any amount of a person’s otherwise eligible rent which is an ineligible service charge by reason of and within the meaning of paragraph 1(a) (i) of Schedule 1(14);

“local reference rent” means the rent determined in accordance with paragraph 4 of Schedule 1A;

“property-specific rent” means the rent determined under paragraph 1(2) of Schedule 1A except where a rent determination has been made under paragraph 3 of that Schedule, when it shall be the latter determination;

“reckonable rent” means those payments, which a person is liable to make in respect of the dwelling which he occupies as his home, and which are eligible, or would, but for this regulation, be eligible for housing benefit plus the amount of any deduction for fuel or deduction for meals, as the case may be, which that person is liable to pay;

“relevant rent” means—

- (a) in a case where both a property-specific rent and a size-related rent, have been determined, whichever rent is the lower of the two, or
- (b) in a case where only a property-specific rent or a size-related rent, as the case may be, has been determined, that rent,

less any amount of such a rent which the Executive has determined pursuant to paragraph 5 of Schedule 1A is attributable to the provision of services which are ineligible to be met by housing benefit, and

“size-related rent” means the rent determined by the Executive under paragraph 2(2) of Schedule 1A.”.

Amendment of regulation 12 of the principal Regulations

8. In regulation 12(2) of the principal Regulations (restrictions on rent increases)(15) for “regulation 11(7)” there shall be substituted “regulation 11(14)”.

(14) Paragraph 1(a)(i) was amended by regulation 7(a) of S.R. 1988 No. 314

(15) Paragraph (2) was inserted by regulation 4(b) of S.R. 1989 No. 125

Insertion of regulation 12A in the principal Regulations

9. After regulation 12 of the principal Regulations (restrictions on rent increases) there shall be inserted the following regulation—

“Pre-tenancy determinations

12A.—(1) Except in the case where any liability to make payments in respect of a dwelling would be to the Executive, a determination shall be made by the Executive of the amount of rent which may be used in the calculation of housing benefit, where a request is received from a person (“the prospective occupier”) on a properly completed form approved for the purpose by the Executive, signifying that he is contemplating occupying a dwelling as his home and that if he does so, he is likely to claim housing benefit, but only where that form—

- (a) is signed by the prospective occupier;
- (b) is countersigned by the person to whom the prospective occupier would incur liability to make such payments, and
- (c) indicates that the person countersigning agrees to the application being made for that determination.

(2) A determination by the Executive shall not be required under paragraph (1) where a request relates to—

- (a) a dwelling in a hostel if, during the period of 12 months which ends on the day on which that request is received by the Executive—
 - (i) the Executive has already made a determination in accordance with Schedule 1A (determinations of rent payable) in respect of a dwelling in that hostel which is a similar dwelling to the dwelling to which the request relates, and
 - (ii) there has been no change relating to a rent allowance that has affected the dwelling in respect of which that determination was made, or
- (b) an “excluded tenancy” within the meaning of Schedule 1B (excluded tenancies).

(3) Where the Executive receives a request pursuant to paragraph (1) it shall make a determination within 7 days of receipt of that request except it is a case where, by reason of paragraph (2), a determination in accordance with Schedule 1A is not required where the Executive shall—

- (a) return it to the prospective occupier, indicating why no such application is required, and
- (b) where it is not required by reason of either paragraph 2(a) of this regulation or paragraph 2 of Schedule 1B, also send him a copy of the previous determination within 4 days of the receipt of that request.

(4) For the purpose of calculating the period of days mentioned in paragraph (3)(b), no regard shall be had to a day in which the offices of the Executive are closed for the purposes of receiving or determining claims.

(5) In this regulation—

“change relating to a rent allowance” means a change or increase to which paragraph 2(3)(a), (b) or (c) of Schedule 1B applies;

“hostel” means a building—

- (a) in which there is provided for persons generally or for a class of persons, domestic accommodation, otherwise than in separate and self-contained

premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both and—

- (b) which is—
- (i) managed or owned by a registered housing association;
 - (ii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or agency, the Executive or a Health and Social Services Board or HSS trust, or
 - (iii) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community,

other than a residential care home, a nursing home or residential accommodation within the meaning of regulation 21(3) of the Income Support (General) Regulations (Northern Ireland) 1987 (special cases)(**16**);

“nursing home” and “residential care home” have the same meanings as in regulation 19(2) of the Income Support (General) Regulations (Northern Ireland) 1987 (residential care homes and nursing homes)(**17**);

“prospective occupier” shall include a person current in receipt of housing benefit in respect of a dwelling which he occupies as his home and who is contemplating entering into a new agreement to occupy that dwelling, but not in a case where his current agreement commenced less than 11 months before such a request;

“registered housing association” means a housing association which is registered in a register maintained under Article 14 of the Housing (Northern Ireland) Order 1992(**18**).”.

Amendment of regulation 61 of the principal Regulations

10. In regulation 61 of the principal Regulations (maximum housing benefit)(**19**)—

- (a) the existing paragraph shall be numbered (1);
- (b) after paragraph (1) there shall be inserted the following paragraphs—
 - “(2) Subject to paragraph (4), where in the case of paragraph (1)(a)—
 - (a) regulation 11 applies;
 - (b) the maximum rent is less than the amount which would be the claimant’s eligible rent if regulation 11 did not apply (“his reckonable rent”), and
 - (c) the Executive is satisfied that—
 - (i) an amount by way of housing benefit would fall to be payable to the claimant, and
 - (ii) unless that amount is increased, the claimant or a member of his family will suffer exceptional hardship,

the Executive may determine that the amount of the person’s appropriate maximum housing benefit calculated in accordance with paragraph (1)(a) shall be such increased amount as it considers appropriate in the particular circumstances of the case, but so that the amount of housing benefit

(16) S.R. 1987 No. 459; definition substituted by paragraph 1(4)(a) of Schedule 1 to S.R. 1993 No. 149 and amended by paragraph 1(f) of Schedule 12 to S.R. 1994 No. 65

(17) Definitions substituted and amended by paragraph 1(3) of Schedule 1 and paragraph 6(5)(b) of Schedule 2 to S.R. 1993 No. 149, regulation 4(9)(d) of S.R. 1993 No. 373 and paragraph 1(e) of Schedule 12 to S.R. 1994 No. 65

(18) S.I. 1992/1725 (N.I. 15)

(19) Regulation 61 was amended by regulation 7 of S.R. 1990 No. 345 and regulation 6 of S.R. 1992 No. 549

payable to that person, including any such increased amount, shall not exceed his reckonable rent calculated on a weekly basis in accordance with regulations 69 and 70 (calculation of weekly amounts and rent free periods), after any deduction made in accordance with section 129(3)(b) of the Contributions and Benefits Act (taper) and regulation 63 (non-dependant deductions) and for the purposes of this paragraph “eligible rent” in those regulations shall be taken to mean his reckonable rent.

(3) The Department shall in respect of each financial year allocate to the Executive an amount to be incurred as expenditure in that year for exceptional cases.

(4) The total amount of any increase paid by the Executive under paragraph (2) shall not exceed the amount allocated by the Department under paragraph (3) for such cases.”.

Amendment of regulation 79 of the principal Regulations

11. In regulation 79 of the principal Regulations (review of determinations)—

(a) in paragraph (3)(b)(**20**) for “or (2)” there shall be substituted “, (2) or (5B)(b)”;

(b) after paragraph (4)(**21**) there shall be inserted the following paragraph—

“(4A) Where paragraph (2) applies and the representations referred to in that paragraph relate, in whole or in part, to a determination in accordance with Schedule 1A the Executive shall review the determination in the light of those representations within 27 days of receiving those representations and the period of 14 days referred to in paragraph (2) shall not apply.”;

(c) after paragraph (5A)(**22**) there shall be inserted the following paragraph—

“(5B) Where a determination under Schedule 1A has been revised and that revised determination has led to—

- (a) a reduction in the maximum rent, the determination shall be a change of circumstance;
- (b) an increase in the maximum rent, the revised determination shall have effect in place of the original determination.”.

Amendment of regulation 83 of the principal Regulations

12. In regulation 83(2) of the principal Regulations (decisions upon further review) after “shall” there shall be inserted “, except in the case of a determination under regulation 10A (determinations),”.

Amendment of regulation 91 of the principal Regulations

13. In regulation 91(1) of the principal Regulations (payment on account of a rent allowance) for the words from “having regard to such information” to the end there shall be substituted—

“having regard to—

- (a) such information which may at the time be available to it concerning the claimant’s circumstances, and
- (b) any relevant determination made by the Executive in accordance with Schedule 1A (determinations of rent payable).”.

(20) Paragraph (3)(b) was amended by regulation 11(b) of [S.R. 1992 No. 141](#)

(21) Paragraph (4) was amended by Regulation 11(c) of [S.R. 1992 No. 141](#)

(22) Paragraph (5A) was inserted by regulation 3(10) of [S.R. 1990 No. 297](#)

Amendment of regulation 95 of the principal Regulations

14. After regulation 95(6) of the principal Regulations (withholding of benefit)(23) there shall be added the following paragraphs—

“(7) Where entry has been denied to the dwelling for the purpose of making a determination in accordance with Schedule 1A (determination of rent payable) the Executive may withhold payment of a rent allowance, if—

- (a) in a case where entry has been denied by the claimant, payment would have been made either to the claimant or directly to his landlord, or
- (b) in a case where entry has been denied by the landlord, direct payment would have been made to the landlord,

and for so long as entry continues to be denied.

(8) Any reference in paragraph (7) to the Executive being denied entry to a dwelling, means a case where—

- (a) upon giving 7 days notice to the claimant or the landlord, as the case may be, of the need to obtain such entry, and
- (b) no good reason is shown why entry cannot be given,

the Executive is unable to gain entry to the dwelling for the purpose of making a determination to which that paragraph refers.”.

Insertion of Schedules 1A and 1B to the principal Regulations

15. After Schedule 1 to the principal Regulations (ineligible service charges) there shall be inserted Schedules 1A (determinations of rent payable) and 1B (excluded tenancies) set out in Schedules 1 and 2 to these Regulations.

Savings provisions

16.—(1) Subject to paragraph (2) to (6), the eligible rent of a person—

- (a) who was entitled to housing benefit on both the first date and the second date, or
- (b) who is liable to make payments in respect of a dwelling occupied by him as his home, which is exempt accommodation,

shall be determined in accordance with regulations 10 and 11 of the principal Regulations (rent and restrictions on unreasonable payments) as in operation on 1st April 1996.

(2) Paragraph (1)(a) shall only apply in a case where—

- (a) either—
 - (i) the dwelling occupied as his home by a person to whom paragraph (1)(a) refers is the same on both the first date and the second date, or
 - (ii) the dwelling so occupied was not the same by reason only that the change was caused by a fire, flood, explosion or natural catastrophe rendering the dwelling occupied as the home on the first date uninhabitable, and
- (b) the person was either—
 - (i) continuously entitled to and in receipt of housing benefit between the first date and the second date in respect of the dwelling to which sub-paragraph (a) applies, or

(23) Paragraph (6) was amended by regulation 9(b) of S.R. 1995 No. 89

- (ii) not entitled to or receiving housing benefit for a period not exceeding 4 weeks, but was in continuous occupation of the dwelling to which sub-paragraph (a) refers between the first date and the second date.
- (3) A person shall be deemed to fulfil the requirements of paragraphs (1)(a) and (2), where—
- (a) he occupies the dwelling which he occupied on the relevant date;
 - (b) this regulation applied to the previous beneficiary on the relevant date, and
 - (c) the requirements of paragraphs (4) and (5) are satisfied in his case.
- (4) The requirements of this paragraph are that the person was, on the relevant date,
- (a) the partner of the previous beneficiary, or
 - (b) in a case where the previous beneficiary died on the relevant date, was a person to whom regulation 11(7)(b), (c) or (d), as in operation on 1st April 1996, applied and for the purposes of this paragraph “claimant” in that regulation shall be taken to be a reference to the previous beneficiary.
- (5) The requirements of this paragraph are that a claim for housing benefit is made within 4 weeks of the relevant date and where such a claim is made it shall be treated as having been made on the relevant date.
- (6) In this regulation—
- “the first date” means 1st April 1996, except in a case to which paragraph (3) applies, in which case it shall be the relevant date;
- “the second date” means any day after the first date for which a claimant’s entitlement to housing benefit falls to be determined;
- “the relevant date” means the date—
- (a) of the death of a previous beneficiary;
 - (b) on which a previous beneficiary who was the claimant’s partner left the dwelling so that he and the claimant ceased to be living together as husband and wife, or
 - (c) on which a previous beneficiary, other than a beneficiary to whom regulation 5(8) applied, was imprisoned, but only where on that date he was the partner of the claimant, as the case may be;
- “exempt accommodation” means accommodation which is provided by a housing association, registered charity or voluntary organisation where care, support or supervision is provided by, or on behalf of, that body to the occupants of that accommodation;
- “imprisoned” means detained in custody pending sentence upon conviction or under a sentence imposed by a court;
- “previous beneficiary” means a person—
- (a) who died, left the dwelling or was imprisoned, as the case may be;
 - (b) who was on that date in receipt of housing benefit, and
 - (c) to whom this regulation applied on that date,
- and, in this regulation, a reference to a person occupying a dwelling as his home shall be taken to include a person who is treated as occupying a dwelling as his home by virtue of regulation 5(24).

(24) Regulation 5 was amended by regulation 2 of S.R. 1989 No. 260, regulation 2 of S.R. 1992 No. 549, regulation 3 of S.R. 1993 No. 145, regulation 3(3) of S.R. 1993 No. 149, paragraph 1(c) of Schedule 13 to S.R. 1994 No. 65, regulation 5 of S.R. 1995 No. 89 and regulation 2 of S.R. 1995 No. 101

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on

L.S.

21st March 1996.

W. G. Purdy
Assistant Secretary

The Department of the Environment for Northern Ireland hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on

L.S.

21st March 1996.

J. MacQuarrie
Assistant Secretary

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Regulation 15

To be inserted after Schedule 1 to the principal Regulations

“SCHEDULE 1A

Regulation 10A

Determinations of Rent Payable

Part I

Determinations

Significantly high rents

1.—(1) The Executive shall determine whether, in its opinion, the rent payable under the tenancy of the dwelling at the relevant time is significantly higher than the rent which the landlord might reasonably have been expected to obtain under the tenancy at that time.

(2) If the Executive determines under sub-paragraph (1) that the rent is significantly higher, the Executive shall also determine the rent which the landlord might reasonably have been expected to obtain under the tenancy at the relevant time.

(3) When making a determination under this paragraph, the Executive shall have regard to the level of rent under similar tenancies of similar dwellings in the locality (or as similar as regards tenancy, dwelling and locality as is reasonably practicable) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy.

Size and rent

2.—(1) The Executive shall determine whether the dwelling, at the relevant time, exceeds the size criteria for the occupiers.

(2) If the Executive determines that the dwelling exceeds the size criteria, it shall also determine the rent which a landlord might reasonably have been expected to obtain, at the relevant time, for a tenancy which is—

- (a) similar to the tenancy of the dwelling;
- (b) on the same terms other than the term relating to the amount of rent, and
- (c) of a dwelling which is in the same locality as the dwelling, but which—
 - (i) accords with the size criteria for the occupiers;
 - (ii) is in a reasonable state of repair, and
 - (iii) corresponds in other respects, in the Executive’s opinion, as closely as is reasonably practicable to the dwelling.

(3) When making a determination under sub-paragraph (2), the Executive shall have regard to the same matter and make the same assumption as specified in paragraph 1(3), except that in judging the similarity of other tenancies and dwellings the comparison shall be with the tenancy of the second dwelling referred to in sub-paragraph (2) and shall assume that no one who would have been entitled to housing benefit had sought or is seeking that tenancy.

Exceptionally high rents

3.—(1) The Executive shall determine whether, in its opinion, the rent payable for the tenancy of the dwelling at the relevant time is exceptionally high.

- (2) In sub-paragraph (1) “rent payable for the tenancy” means—
- (a) where a determination is made under paragraph 2(2) the rent determined under that paragraph;
 - (b) where no determination is so made and a determination is made under paragraph 1(2), the rent determined under that paragraph, and
 - (c) in any other case, the rent payable under the tenancy.

(3) If the Executive determines under sub-paragraph (1) that the rent is exceptionally high, the Executive shall also determine the highest rent, which is not an exceptionally high rent and which a landlord might reasonably have been expected to obtain at the relevant time (on the assumption that no one who would have been entitled to housing benefit had sought or is seeking the tenancy) for an uncontrolled tenancy of a dwelling which—

- (a) is in the same locality as the dwelling;
- (b) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria), and
- (c) is in a reasonable state of repair.

(4) For the purpose of determining whether a rent is an exceptionally high rent under this paragraph, the Executive shall have regard to the levels of rent under uncontrolled tenancies of dwellings which—

- (a) are in the same locality as the dwelling (or in as similar a locality as is reasonably practicable), and
- (b) have the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accord with the size criteria).

Local reference rents

4.—(1) The Executive shall make a determination of a local reference rent in accordance with the formula—

$$R = \frac{H + L}{2}$$

where—

R is the local reference rent;

H is the highest rent, in the Executive’s opinion, —

- (a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an uncontrolled tenancy of a dwelling which meets the criteria in sub-paragraph (2), and
- (b) which is not an exceptionally high rent, and

L is the lowest rent, in the Executive’s opinion, —

- (a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an uncontrolled tenancy of a dwelling which meets the criteria in sub-paragraph (2), and
- (b) which is not an exceptionally low rent.

(2) The criteria are—

- (a) that the dwelling under the uncontrolled tenancy—
 - (i) is in the same locality as the dwelling;

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- (ii) is in a reasonable state of repair, and
 - (iii) has the same number of bedrooms and rooms suitable for living in as the dwelling (or, in a case where the dwelling exceeds the size criteria for the occupiers, accords with the size criteria), and
- (b) if the tenant does not have the use under the tenancy of the dwelling of more than one bedroom or room suitable for living in—
- (i) that under the uncontrolled tenancy the tenant does not have the use of more than one bedroom or room suitable for living in;
 - (ii) if the rent under the tenancy includes payments for board and attendance and the Executive considers the amount fairly attributable to board and attendance is a substantial part of the rent, that a substantial part of the rent under the uncontrolled tenancy is fairly attributable to board and attendance;
 - (iii) if paragraph (ii) does not apply and the tenant shares a kitchen or toilet with a person other than a member of his household, a non-dependant or a person who pays rent to the tenant, that the uncontrolled tenancy provides for the tenant to share a kitchen or toilet, and
 - (iv) if paragraphs (ii) and (iii) do not apply, that the circumstances described in paragraphs (ii) and (iii) do not apply in relation to the uncontrolled tenancy.
- (3) When ascertaining H and L under sub-paragraph (1), the Executive—
- (a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy, and
 - (b) shall exclude the amount of any rent which, in the Executive’s opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.
- (4) In sub-paragraph (2)—
- “bedroom or room suitable for living in” does not include a room which the tenant shares with any person other than—
- (a) a member of his household;
 - (b) non-dependant, or
 - (c) a person who pays rent to the tenant.
- (5) In sub-paragraph (3), “services” means services performed or facilities (including the use of furniture) provided for, or rights made available to, the tenant, but not—
- (a) the provision of meals (including the preparation of meals or provision of unprepared food), or
 - (b) the provision of services to which any service charge for fuel relates.

Services

- 5.—(1) Where the dwelling is not in a hostel and the Executive makes a determination under—
- (a) paragraph 1(1) (where no determination is to be made under paragraph 1(2), 2(2) or 3(3));
 - (b) paragraph 1(2) (where no determination is to be made under paragraph 2(2) or 3(3));
 - (c) paragraph 2(2) (where no determination is to be made under paragraph 3(3)), or
 - (d) paragraph 3(3),

it shall also determine whether, in its opinion, any of the rent at the relevant time is fairly attributable to the provision of services which are ineligible to be met by housing benefit and, if so, the amount which in its opinion is so attributable (except where it considers the amount is negligible).

(2) In sub-paragraph (1)—

“rent”, in relation to a determination under paragraph 1(2), 2(2) or 3(3), means (as the case may be) the rent determined under paragraph 1(2), 2(2) or 3(3) and, in relation to a determination under paragraph 1(1), means the rent payable under the tenancy at the relevant time, and

“services” has the meaning given in paragraph 4(5).

Part II

Assumptions, etc

Medical, nursing and other care services

6. Where the rent includes any of the charges specified in paragraph 1(*d*), (*e*) or (*f*) of Part I of Schedule 1, the Executive shall assume that—

(a) the items to which the charges relate were not to be provided or made available, and

(b) the rent payable under the tenancy at the relevant time is such amount as is specified in the application as the rent which would have been payable under the tenancy at that time if those items were not to be provided or made available.

Housing associations etc.

7.—(1) Where the landlord is a housing association or a charity, the Executive shall assume that the landlord is not such a body.

(2) The Executive shall not take into account the rent under any tenancy where the landlord is a housing association or where the landlord is a charity and the dwelling is provided by the landlord in the pursuit of its charitable purposes.

(3) In this paragraph—

“charity” has the same meaning as in the Charities Act 1964(25).

Part III

Indicative Rent Levels

8.—(1) The Executive shall determine the indicative rent level for each category described in sub-paragraph (3) in accordance with the following formula—

$$I = \frac{H + 3L}{4}$$

where—

I is the indicative rent level;

H is the highest rent, in the Executive’s opinion—

(a) which a landlord might reasonably be expected to obtain at the time the determination is being made for an uncontrolled tenancy of a dwelling meeting the criteria in sub-paragraph (2), and

(b) which is not an exceptionally high rent, and

(25) 1964 c. 33 (N.I.)

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- L is the lowest rent, in the Executive’s opinion—
- (a) which a landlord might reasonably be expected to obtain at the time the determination is being made for an uncontrolled tenancy of a dwelling meeting the criteria in sub-paragraph (2), and
 - (b) which is not an exceptionally low rent.
- (2) The criteria are that—
- (a) the dwelling is in a reasonable state of repair, and
 - (b) the dwelling and tenancy accord with the category to which the determination relates.
- (3) The categories for the purposes of this paragraph are—
- (a) a dwelling where the tenant does not have use of more than one room and where a substantial part of the rent under the tenancy is fairly attributable to board and attendance;
 - (b) a dwelling where the tenant does not have use of more than one room, the tenancy provides for him to share a kitchen or toilet and head (a) does not apply;
 - (c) a dwelling where the tenant does not have use of more than one room and where heads (a) and (b) do not apply;
 - (d) a dwelling where the tenant does not have use of more than two rooms and where none of heads (a) to (c) applies;
 - (e) a dwelling where the tenant does not have use of more than three rooms and where none of heads (a) to (d) applies;
 - (f) a dwelling where the tenant does not have use of more than four rooms and where none of heads (a) to (e) applies;
 - (g) a dwelling where the tenant does not have use of more than five rooms and where none of heads (a) to (f) applies, and
 - (h) a dwelling where the tenant does not have use of more than six rooms and where none of heads (a) to (g) applies.
- (4) When ascertaining H and L under sub-paragraph (1), the Executive—
- (a) shall assume that no one who would have been entitled to housing benefit had sought or is seeking the tenancy, and
 - (b) shall exclude the amount of any rent which, in the Executive’s opinion, is fairly attributable to the provision of services which are ineligible to be met by housing benefit.
- (5) In this paragraph—
- “room” means a bedroom or room suitable for living in and in heads (a), (b) and (c) of sub-paragraph (3) does not include a room which the tenant shares with any person other than—
- (a) a member of his household;
 - (b) a non-dependant of the tenant, or
 - (c) a person who pays rent to the tenant.
- “services” has the meaning given in paragraph 4(5).

Part IV

Size Criteria

9. One bedroom or room suitable for living in shall be allowed for each of the following categories of occupier (and each occupier shall come within only the first category for which he is eligible)—

- (a) a married couple or an unmarried couple;
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than ten years old;
- (e) a child.

10. The number of rooms (excluding any allowed under paragraph 9) suitable for living in allowed are—

- (a) if there are less than four occupiers, one;
- (b) if there are more than three and less than seven occupiers, two, and
- (c) in any other case, three.

Part V

Special Cases

Houseboats

11. Where a determination relates in whole or in part to mooring charges for a houseboat, this Schedule applies in relation to that determination (or, as the case may be, to that part which relates to those charges) with the following modifications—

- (a) references to a tenancy, a tenancy of a dwelling or an uncontrolled tenancy are references to an agreement under which those charges are payable (and references to a landlord and a tenant shall be construed accordingly), and
- (b) no determination shall be made under paragraph 2 of Part I (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

Mobile homes

12. Where a determination relates in whole or in part to payments in respect of the site on which a caravan or a mobile home stands, this Schedule applies in relation to that determination (or, as the case may be, that part which relates to those payments) with the following modifications—

- (a) references to a tenancy, a tenancy of a dwelling or an uncontrolled tenancy are references to an agreement under which those payments are payable (and references to a landlord and a tenant shall be construed accordingly), and
- (b) no determination shall be made under paragraph 2 of Part I (size criteria) and references to the dwelling exceeding the size criteria shall not apply.

Rental purchase agreements

13. Where a determination relates to a rental purchase agreement, the agreement is to be treated as if it were a tenancy.

Interpretation

14. In this Schedule—

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“uncontrolled tenancy” means a tenancy which is not a protected or statutory tenancy within the meaning of the Rent (Northern Ireland) Order 1978⁽²⁶⁾ or a secure tenancy within the meaning of Article 25 of the Housing (Northern Ireland) Order 1983⁽²⁷⁾;

“determination” means a determination made in accordance with Part I or Part III of this Schedule;

“dwelling” means any residential accommodation whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

“hostel” has the same meaning as in regulation 12A;

“occupier” means a person (whether or not identified by name) who is stated to occupy the dwelling;

“relevant time” means the time the application for the determination is made or, if earlier, the tenancy ends;

“size criteria” means the standards relating to bedrooms and rooms suitable for living in specified in this Schedule;

“tenancy” includes—

- (a) a licence, and
- (b) a prospective tenancy or licence, and

references to a tenant, a landlord or any other expression appropriate to a tenancy shall be construed accordingly.”

SCHEDULE 2

Regulation 15

To be inserted after Schedule 1A to the principal Regulations

“SCHEDULE 1B

Regulation 10A(3)(b) & 12A(2)(b)

Excluded Tenancies

1. An excluded tenancy is any tenancy to which any of the following paragraphs apply.

2.—(1) Subject to sub-paragraphs (2) and (3), where the Executive has made a determination, which relates to the tenancy in question or any other tenancy of the same dwelling this paragraph applies to—

- (a) the tenancy in respect of which that determination was made, and
- (b) any other tenancy of the same dwelling on terms which are substantially the same, other than the term relating to the amount of rent, as those terms were at the time of that determination or, if earlier, at the end of the tenancy.

(2) Sub-paragraph (1) shall not apply unless the determination mentioned in that sub-paragraph is made within the period of 12 months ending on the date on which the Executive received the claim in question.

(3) Sub-paragraph (1) shall not apply where subsequent to the making of the determination mentioned in that sub-paragraph—

- (a) the number of occupiers of the dwelling has changed and that dwelling is not in a hostel;

⁽²⁶⁾ S.I. 1978/1050 (N.I. 20)

⁽²⁷⁾ S.I. 1983/1118 (N.I. 15)

- (b) there has been a substantial change in the condition of the dwelling (including the making of improvements) or the terms of the tenancy other than a term relating to rent;
 - (c) in a case where the Executive has made a determination for the purposes of paragraph 2 of Part I of Schedule 1A (size and rent determinations), but since the date of the application for that determination—
 - (i) a child, who is a member of the household occupying the dwelling, has attained the age of 10 years;
 - (ii) a young person, who is a member of the household occupying that dwelling, has attained the age of 16 years, or
 - (iii) there is a change in the composition of the household occupying the dwelling.
3. This paragraph applies where the landlord is a registered housing association, except in a case where the Executive consider that—
- (a) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependants of his and any person paying rent to him), or
 - (b) the rent payable for that dwelling is unreasonably high.
4. This paragraph applies to a tenancy which is a protected or statutory tenancy within the meaning of the Rent (Northern Ireland) Order 1978(28).
5. This paragraph applies to a housing association tenancy which is a housing association tenancy to which Article 3 of the Housing (Northern Ireland) Order 1992(29) applies.
- 6.—(1) Subject to sub-paragraph (2) this paragraph applies to a tenancy in respect of a dwelling comprised in land which has been disposed of under Article 88 of the Housing (Northern Ireland) Order 1981(30).
- (2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if there has been an increase in rent since the disposal occurred.
7. In this Schedule expressions have the same meaning as in regulation 12A(5) and, in the case of a determination under regulation 12A(1), any reference to a “tenancy” shall be taken as a reference to a prospective tenancy and any reference to an “occupier” or any person “occupying” a dwelling shall, in the case of such a determination, be taken to be a reference to a potential occupier or potential occupation of that dwelling.”

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further amend the Housing Benefit (General) Regulations (Northern Ireland) 1987. They make and further amend provisions relating to maximum eligible rent in cases where housing benefit is payable, including conferring a discretion on the Northern Ireland Housing

(28) S.I. 1978/1050 (N.I. 20)

(29) S.I. 1992/1725 (N.I. 15)

(30) S.I. 1981/156 (N.I. 3)

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Executive (“the Executive”) to pay a lesser sum in appropriate cases (regulations 3, 5 and 7). They also add a discretion to pay more benefit than would otherwise be payable by reason of these Regulations (regulation 10).

These Regulations required the Executive to make determinations relating to a tenancy of a dwelling and a prospective tenancy (regulations 6 and 9).

These Regulations provide that:

- (a) when making a revised determination of the maximum rent under regulations 10A the Executive shall do so within set time limits; they also specify how such revised determinations are to be treated (regulation 11);
- (b) in reaching its decision a Review Board does not replace the Executive’s determination of the maximum rent under regulation 10A (regulation 12);
- (c) in making a payment on account the Executive have regard to any relevant determination made under regulation 10A (regulation 13);
- (d) in a case where the Executive has been denied entry to the dwelling for the purpose of making a determination for no good reason housing benefit can be withheld (regulation 14).

These Regulations also make savings provisions in relation to housing benefit claimants whose entitlement to housing benefit commenced before these Regulations come into operation (regulation 16) and extend this protection to the partners of such claimants, members of the household of deceased claimants in certain circumstances and occupants of exempt accommodation.

Regulations 4, 8 and 15 contain amendments consequential on the changes to housing benefit.